

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2008-0039-PWS-E **TCEQ ID:** RN102676129 **CASE NO.:** 35172  
**RESPONDENT NAME:** Jack Neely dba Heights Water Company

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Heights Water Company, 14397 Farm-to-Market Road 2767, Tyler, Smith County

**TYPE OF OPERATION:** Public water supply

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on May 19, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney/SEP Coordinator:** None  
**TCEQ Enforcement Coordinator:** Mr. Epifanio Villarreal, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4033; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  
**Respondent:** Mr. Jack Neely, Owner, Heights Water Company, 14397 Farm-to-Market Road 2767, Tyler, Texas 75705  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 8, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 10, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review.</p> <p><b>WATER</b></p> <p>Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM"), based on a running annual average [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(c)].</p>	<p><b>Total Assessed:</b> \$392</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$192 (remaining \$200 due in 2 monthly payments of \$100 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM; and</p> <p>b. Within 380 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS 2120051



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

<b>DATES</b>	<b>Assigned</b>	2-Jan-2008	<b>Screening</b>	4-Jan-2008	<b>EPA Due</b>	1-Jan-2008
	<b>PCW</b>	4-Jan-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Jack Neely dba Heights Water Company
<b>Reg. Ent. Ref. No.</b>	RN102676129
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>	
<b>Enf./Case ID No.</b>	35172
<b>Docket No.</b>	2008-0039-PWS-E
<b>Media Program(s)</b>	Public Water Supply
<b>Multi-Media</b>	
<b>Admin. Penalty \$ Limit Minimum</b>	\$50
<b>Maximum</b>	\$1,000
<b>No. of Violations</b>	1
<b>Order Type</b>	1660
<b>Enf. Coordinator</b>	Epifanio Villarreal
<b>EC's Team</b>	Enforcement Team 2

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$250**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **32% Enhancement** **Subtotals 2, 3, & 7** **\$80**

Notes

The penalty enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action, one dissimilar NOV, and one prior enforcement order containing denial of liability.

Culpability

Yes

25% Enhancement

Subtotal 4

\$62

Notes

The Respondent was issued alert letters for total trihalomethane ("TTHM") exceedances on August 19, 2004, March 23, 2005, December 20, 2006, and March 8, 2007.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement\*

Subtotal 6

\$0

Total EB Amounts  
Approx. Cost of Compliance

\$875

\$5,000

\*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal

\$392

### OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

\$392

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$392

### DEFERRAL

0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral offered due to culpability.

### PAYABLE PENALTY

\$392

Screening Date 4-Jan-2008

Docket No. 2008-0039-PWS-E

PCW

Respondent Jack Neely dba Heights Water Company

Policy Revision 2 (September 2002)

Case ID No. 35172

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102676129

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 32%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

## Compliance History Notes

The penalty enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action, one dissimilar NOV, and one prior enforcement order containing denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 32%

<b>Screening Date</b> 4-Jan-2008		<b>Docket No.</b> 2008-0039-PWS-E		<b>PCW</b>	
<b>Respondent</b> Jack Neely dba Heights Water Company		<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 35172		<small>PCW Revision November 6, 2007</small>			
<b>Reg. Ent. Reference No.</b> RN102676129					
<b>Media [Statute]</b> Public Water Supply					
<b>Enf. Coordinator</b> Epifanio Villarreal					
<b>Violation Number</b> <input type="text" value="1"/>					
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)			
<b>Violation Description</b>		Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for TTHM, based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.086 mg/L for the first quarter of 2007 and 0.086 mg/L for the second quarter of 2007.			
		<b>Base Penalty</b>		<input type="text" value="\$1,000"/>	

  

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	Actual	<input type="text" value=""/>	<input type="text" value="x"/>	<input type="text" value=""/>	
	Potential	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	
					<b>Percent</b> <input type="text" value="25%"/>

  

**>> Programmatic Matrix**

<b>Falsification</b>					
<b>Major</b>	<b>Moderate</b>	<b>Minor</b>			
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>			
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>			
					<b>Percent</b> <input type="text" value="0%"/>

  

<b>Matrix Notes</b>	Exceeding the MCL for TTHM exposed customers of the water supply to significant amounts of contaminants that did not exceed levels that are protective of human health.
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<b>Adjustment</b>	<input type="text" value="\$750"/>
<input type="text" value="\$250"/>	

  

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="181"/>	Number of violation days
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<small>mark only one with an x</small>	daily	<input type="text" value=""/>	
	monthly	<input type="text" value=""/>	
	quarterly	<input type="text" value=""/>	
	semiannual	<input type="text" value=""/>	
	annual	<input type="text" value="x"/>	
	single event	<input type="text" value=""/>	

  

One annual event is recommended.	
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<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$875"/>	Violation Final Penalty Total <input type="text" value="\$392"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$392"/>	

**Economic Benefit Worksheet****Respondent** Jack Neely dba Heights Water Company**Case ID No.** 35172**Reg. Ent. Reference No.** RN102676129**Media** Public Water Supply**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$5,000	1-Jan-2007	1-Jul-2009	2.5	\$42	\$833	\$875
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed costs include the amount to implement an alternative method of disinfection, calculated from the first day of noncompliance to the estimated date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$5,000

**TOTAL**

\$875

# Compliance History

Customer/Respondent/Owner-Operator:	CN601358674	NEELY, JACK	Classification:	Rating:
Regulated Entity:	RN102676129	HEIGHTS WATER CO	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING	REGISTRATION LICENSE		2120051 2120051
Location:	14397 FM 2767, TYLER, TX, SMITH COUNTY			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	January 03, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 03, 2003 to January 03, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Epi Villarreal Phone: (210) 403-4033

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/23/2007

ADMINORDER 2006-2256-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(iv)

Description: Failed to to maintain copies of customer service inspection reports that can be made available to Commission personnel at the time of investigations.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(iii)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection at each pump station or pressure plane.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)

Description: Failed to compile and maintain a facility plant operations manual for operator review and reference.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failed to equip the air compressor line with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)

Description: Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121(b)

Description: Failed to maintain an up-to-date chemical and microbiological monitoring plan for the facility that identifies all locations where routine sampling for microbial contaminants will be conducted.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(2)

Description: Failed to maintain on file and make available an up-to-date map of the distribution system so that valves and mains may be easily located during emergencies.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)

Description: Failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Commission each quarter by the tenth day of the month following the end of the quarter.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failed to provide a sanitary control easements or an approved exception to the easement requirement that covers the land within 150 feet of the water system's two wells.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	04/28/2003	(34135)
2	11/30/2006	(519325)
3	05/16/2007	(610893)
4	09/28/2007	(611006)
5	12/17/2007	(611823)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/04/2003 (34135)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(iv)

Description: Failed to maintain copies of customer service inspection reports that can be made available to Commission personnel at the time of investigations.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(iii)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection at each pump station or pressure plane.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii)

Description: Failure to maintain the tank inspection records. The results of these inspections must be recorded and maintained for at least five years, per §290.46(f)(3)(D)(ii). The records must be available for review by Commission staff during annual sanitary surveys of the system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)

Description: Failure to maintain the system flush records. Monthly Reports of Water Works Operation must be compiled regularly each month and kept on file for commission review for at least 2 years. The reports must be completed in ink, typed, or computer-printed and must be signed by the certified operator.

Date: 05/16/2007 (610893)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for Trihalomethanes during the first quarter of 2007.

Date: 09/28/2007 (611006)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for Trihalomethanes during the second quarter of 2007.

F. Environmental audits.

N/A



G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JACK NEELY DBA HEIGHTS  
WATER COMPANY  
RN102676129**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0039-PWS-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jack Neely dba Heights Water Company ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 14397 Farm-to-Market Road 2767 in Tyler, Smith County, Texas (the "Facility") that has approximately 86 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 15, 2007.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Three Hundred Ninety-Two Dollars (\$392) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Ninety-Two Dollars (\$192) of the administrative penalty. The remaining amount of Two Hundred Dollars (\$200) of the administrative penalty shall be payable in two monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall



be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM"), based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on December 8, 2007.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jack Neely dba Heights Water Company, Docket No. 2008-0039-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113.
  - b. Within 380 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:





DBP Compliance Coordinator  
Water Supply Division/PDWS, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Erdin  
\_\_\_\_\_  
For the Executive Director

4/30/2008  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Jack Neely  
\_\_\_\_\_  
Signature

3-3-08  
\_\_\_\_\_  
Date

JACK NEELY  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Jack Neely dba Heights Water Company

OWNER  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

